



388975



**Fw: Access Agreement**  
Gary Steinbauer to: Stephen Wolfe

05/26/2011 11:17 AM

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----- Forwarded by Gary Steinbauer/R5/USEPA/US on 05/26/2011 10:17 AM -----

From: Gary Steinbauer/R5/USEPA/US  
To: jkoncelik@frantzward.com  
Cc: bart.ray@epa.state.oh.us, bedfordanodizing@aol.com, mark.navarre@epa.state.oh.us, Stephen Wolfe/R5/USEPA/US@EPA  
Date: 04/08/2011 05:33 PM  
Subject: Re: Access Agreement

Mr. Koncelik,

Thank you for your voicemail and emails. Also, thank you for providing your proposed changes to the access agreement.

Contrary to your statement, U.S. EPA's most recent review of the samples collected from the material released from Bedford's facility shows that hazardous substances are present in this material. The sample results show several hundred parts per million of the following hazardous substances: lead, chromium, nickel, zinc, and possibly others.

Furthermore, the streams impacted by Bedford's release are tributaries of the Brandywine Creek, which is a tributary of the Cuyahoga River. Waterfowl and other animals inhabit these streams. A significant precipitation event, which can be common this time of year, could lead to the migration of the hazardous substances and/or pollutants or contaminants downstream to the Brandywine Creek or into adjacent wetlands. Any such migration will increase the costs of cleanup; it could also lead to actual or potential exposure to human populations, animals, or the food chain from hazardous substances and/or pollutants or contaminants. Therefore, it is imperative that the cleanup begin as soon as possible.

If Bedford fails to adequately perform the cleanup as determined by Ohio EPA and within the time frame established by Ohio EPA, U.S. EPA will consider utilizing its statutory authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675, and/or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6922k, to address Bedford's release. Under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), where U.S. EPA uses public funds towards the cleanup of hazardous substances, responsible parties are liable for all costs associated with the removal or remedial action and all other necessary costs incurred in the clean up, including investigation, planning, and enforcement costs. In this regard, I am attaching a clean copy of the access agreement. While we do not take exception to some of your proposed changes, there are others to which we cannot agree. Please send a signed copy of the access agreement to me via email, copying Mr. Wolfe at the address above. If we do not receive a signed access agreement from Bedford by April 13, 2011, we will consider it a denial of access to the property and proceed accordingly.

Finally, please inform your client to perform all necessary work to prevent the migration of the hazardous substances and/or pollutants or contaminants released from its facility.

Thank you for your prompt attention to this matter. If you have any questions, please give me a call.

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Bedford Access Agreement.pdf

jkoncelik

Mr. Steinbauer, I left a voice mail for you as well....

04/08/2011 12:59:41 PM

From: jkoncelik@frantzward.com  
To: Gary Steinbauer/R5/USEPA/US@EPA  
Cc: Stephen Wolfe/R5/USEPA/US@EPA, mark.navarre@epa.state.oh.us, bart.ray@epa.state.oh.us, bedfordanodizing@aol.com  
Date: 04/08/2011 12:59 PM  
Subject: Access Agreement

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Mr. Steinbauer,

I left a voice mail for you as well...Bart Ray from Ohio EPA appears to find unacceptable my client's proposal for work at the site, including its contractor and the time frame for commencement of work. I anticipate the we may not be able to work through the dispute with Mr. Ray. Therefore, I am sending you comments on the draft access agreement you gave to my client.

We question the urgency for performing any sort of remediation at the site as well as whether the situation justifies the use of federal funds. Sampling performed showed that there are only trace metals in the material related to the spill. In addition, we are going to confirm in the field as soon as possible, but from discussions with employees the drainage ditches in which the material sits do not appear to connect to a waterbody (stream or river) that would be considered waters of the U.S.

Regardless, my client is more than willing to cooperate within his financial constraints. It is our understanding that the drainage ditches which collected the vast majority of the material could be blocked off immediately to prevent migration off-site and allow the material to dry. This would appear to be a prudent and cost effective manner of addressing the problem. But it appears Mr. Ray disagrees.

My client wants to continue to cooperate with both U.S. EPA and Ohio EPA. The company is still willing to perform immediate steps to prevent migration from the drainage ditches. If that is not satisfactory, the

company is willing to sign an appropriate access agreement to allow U.S. EPA to perform work it deems necessary. Therefore, I have attached a mark up of the access agreement in the event the parties cannot reach agreement.

If you have questions please call.

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[attachment "Redline Consent for Access to Property 4-1-11.doc" deleted by Gary Steinbauer/R5/USEPA/US]